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Chapter 23

Brexit and the Common Fisheries Policy: Opportunities for multi-level differentiated (dis)integration?

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Abstract

The differentiated integration literature has developed from focusing on the varied nature of integration between EU Member States (internal) to considering the level of integration with non-EU states (external). Within a multi-level governance environment, differentiated integration opens up spaces for policy actors to form networks at the sub-state level. However, the scope of integration in these networks varies considerably from country to country as well as from region to region. This chapter aims to examine differentiated integration from a multi-level perspective, identifying and analysing contestation in integration goals between actors at different levels of governance. From a differentiated integration perspective, an analysis of the UK and Scottish government's divergent attitudes towards Europe offers an opportunity to examine narratives of disintegration as well as narratives that aim to establish collaboration in new or existing networks. We use the case of fisheries policy to highlight that there are divergent narratives that are shaped by domestic political environments but also by functional imperatives. Brexit has brought into focus the political importance of fisheries and the multi-level tensions that exist within the UK in terms of the future relationship with the European Union. Overall, the chapter provides evidence of multi-level tensions in relation to differentiated integration.
Introduction

The extent to which the UK will remain integrated or reintegrated in the EU institutions and policy processes will evolve over time. Furthermore, not all parts of the UK will be integrated in the same way and to the same extent. Although formal treaties are negotiated between the EU and the UK as a nation-state, different constituent parts of the UK have different economic, social, political and cultural linkages to Europe and, as such, will achieve different levels of integration with European institutions and policies. The concept of differentiated (dis)integration allows us to capture some of these variations. However, so far studies of differentiated integration have often suffered from state-centered methodological approaches and have afforded little attention to the multi-level nature of differentiated integration. The political contestation of Brexit offers a case study of how different parts of the UK attempt to avoid disintegration or reintegrate with some of the EU institutions and policy processes.

This chapter focuses on the case of fisheries policy and the potential differentiated relationship that Scotland might have with the EU, particularly in comparison to England, post-Brexit. Scotland voted overwhelmingly to remain in the EU (62%) and the Scottish National Party (SNP) led Scottish Government has opposed Brexit since the vote. It has pledged to continue to shadow EU regulations and threatened a second independence referendum in order to join the EU as an independent country. Despite being only a small part of the UK economy, fisheries played a major political role in the run up to the referendum and in the subsequent post-Brexit Trade and Cooperation Deal negotiations. The Common Fisheries Policy (CFP) is seen by many in the fishing industry and the wider public as an example of a policy that has disadvantaged the UK (McAngus 2018). Yet, there is widespread recognition that some links with the CFP will be necessary in the post-Brexit context. Fisheries require shared management in order to be sustainably exploited and existing international treaty obligations commit both the UK and the EU to cooperate and coordinate the management of fishing stocks (Huggins et al. 2018).

The aim of the chapter is to provide an initial analysis of the key drivers for multi-level tensions of political and functional integration between the EU and UK. In the context of fisheries, it identifies institutional, functional (economic) and political imperatives for multi-level differentiated integration. The chapter commences with a short introduction of the CFP and the UK’s position with regards to the policy. Subsequently, we turn to Brexit and its implications for dis-integration from the CFP. The discussion will then focus on the multi-level tensions of fisheries policy, which is followed by a conceptual discussion of multi-level differentiated integration. Overall, the chapter contributes to ongoing discussions on the role of differentiated integration in the context of Brexit, and in particular sheds light on the complexities of differentiated integration in multi-level settings. It also highlights the need for specific policy focused analysis of differentiated (dis)integration in order to understand the drivers and barriers for integration. Fisheries policy offers a particular interesting case where (dis)integration is informed by domestic politics as well as the wider international context where both the UK and the EU have well-established fisheries treaty obligations.
Common Fisheries Policy and the UK

In this section we will examine the history of the CFP in order to establish to what extent Member States, including the UK, were integrated in this policy and if there is scope for differentiation. The (then) EEC was given formal competence over fisheries policy in 1962, which makes it one of the longest established policies in the EU (Churchill and Owen 2010). Fisheries is an exclusive EU competence and the CFP is one of the most highly EU regulated policy areas. One the one hand, at the policy level, there is very little room for differentiation, in the sense that no EU Member State has an ‘opt out’ or any preferential arrangements. On the other hand, trends in wider European integration point to differentiation in European fisheries policy, and the absence of fisheries from Norway’s European Economic Area agreement is often cited as an example differentiated integration (Egeberg and Trondal, 1999; Leruth, 2013). Within the EU, although the CFP provides the overall policy framework for strategic management, there is room for some differentiation between Member States in terms of implementation. This is why boat sizes, fishing methods and quota allocations can differ considerably from country to country. For example, the Total Allowable Catch (TAC) is negotiated at the EU level with other independent coastal states for each area and fish species every year. This is then divided among Member States according to historical fishing activities in that area. However, it is the Member States that then decide how this quota is allocated for their flagged vessels, adhering to certain principles set out in the CFP (Ares and White, 2018). Much of the literature on the CFP has naturally focused on the policy’s ability to meet core objectives, for example assessing its ability to ensure the sustainability of stocks, noting that TACs are often set above the levels recommended by scientific advice due to, amongst other things, the nature of political bargaining between Member States in the Council (Carpenter et al., 2016; Daw & Gray, 2005; Khalilian et al., 2010). Overall, however, little attention has been paid to the extent or scope of differentiated integration in EU fisheries policy.

Although the UK did not join the EC until 1973, it has been an important Member State in developing the CFP. As an island nation its identity is intrinsically linked to the sea and fishing and, as the Member State with the largest EEZ, policy actors from the UK have been influential in shaping EU fisheries policy (Borges et al. 2018), which is not dissimilar to many areas of public policy given that the UK has had a longstanding reputation for being an active influencer or ‘uploader’ to EU policy processes (Connolly, 2008). The evidence underpinning this reputation failed to gain a great deal of attention within the British political narratives in the years leading up to the referendum on Britain’s membership of the EU in 2016. That said, fisheries, has not always been a public policy priority for successive UK governments, often resulting in governments being accused by industry actors of focusing on other industries at the expense of fisheries (Hatcher, 2020).

In the UK fisheries management has been a devolved competency. There are four fisheries authorities: Marine Management Organisation in England (operating as a non-departmental public body linked to Defra), Marine Scotland, Welsh Government and Department of Agriculture, and the Environment and Rural Affairs in Northern Ireland. However, from a Scottish perspective, fisheries are a good example of a Europeanised policy area whereby it has technically been devolved under the 1998 Scotland Act but its implementation is subject to frameworks set at the
EU level. Therefore, to the outsider, there is a degree of political complexity around the governance of fisheries in the context of British constitutional arrangements. Up until the Brexit vote in 2016, in a similar way to other Europeanised policy areas, fisheries policy had been generally stable with regards to the constitutional understanding between the Scottish and UK Governments about where decisions were made and implemented. However, coordination between the four constituent parts of the UK has been evident. For example, in 2012 a concordat a common approach between the administrations was agreed (UK Government 2012). Yet, ‘the process of leaving the EU has meant that this constitutional understanding has been disrupted’ (McAngus et al. 2019), partly due to the political contestations between constituent parts of the UK over Brexit itself (particular between the anti-Brexit SNP-led Scottish government and the Conservative-led UK government). The next section of the chapter considers the implications of Brexit for fisheries policy.

**Brexit – disintegrating from the Common Fisheries Policy**

We begin this section by explaining the main reasons for the prominence of fisheries issues in the Brexit context and the extent to which these are addressed as part of the trade agreement. In the run up to the 2016 referendum, and in its direct aftermath, fisheries played an important role in terms of shaping the debate. There are a number of explanations for the prominence of fisheries in the Brexit debate. The CFP has received considerable criticism as an example of an EU policy that has been considered as deeply flawed. This is based on the claim the CFP does not take into account scientific advice and therefore fails to protect the environment and underlines sustainable fishing (Daw and Gray 2005). The issue of discarding is probably the most high-profile example of its shortcomings in terms of protecting fishing stocks. In the UK the CFP has also been considered to treat British fishers unfairly and is seen as an obstacle to UK fishing interests in terms of having greater levels of control of what and where fishers fish (McLean and Gray 2009).

Furthermore, attitudinal surveys of UK fishers have shown that this group was almost overwhelmingly in support of leaving the European Union (i.e. pro-Brexit). For example, a survey conducted among Scottish fishers prior to the 2016 referendum showed that 93 percent intended to vote leave (McAngus 2018). However, positions between stakeholders are not uniform. For example, Scottish freshwater fishers on the West coast were more in favour of remaining in the EU, as their produce is almost exclusively exported to EU markets (Dickie, 2019). This highlights that the ‘fishing industry’ is by no means one thing and is made up of a variety of different interests within the catching side of the sector and with regards to the produce sector. In overall terms, the idea of access to UK waters offered an effective, albeit simplistic, narrative for understanding the wider demands for so-called UK sovereignty. This was played out as part of the ‘taking back control’ narratives employed by the Leave campaign. Eurosceptics have long argued that the UK, and not the EU, should be able to decide which boats from other countries get access to its waters.

However, after 47 years of membership fishing interests between the UK and EU are deeply integrated and intertwined. In terms of access, historical catch levels in foreign waters have to be taken into account and are an important part of the CFP framework (McAngus et al. 2019). In the
CFP this is called the ‘relative stability’ principle. In the early stages of the Brexit negotiations, the UK sought to move to a system of zonal attachment which is based on quota allocations linked to whose waters fish actually inhibit (Bevington 2020). Such an approach would require annual rounds of negotiations between the EU and the UK similar to those conducted by the EU and other non-EU states (i.e. Norway, Iceland and the Faroe Islands.

Macro-economic market conditions are a further element of the post-Brexit EU-UK relationship. For both the UK and the EU, fish trade accounts for a very small proportion (0.8%) of total UK-EU trade. However, market access is an important factor. Indeed, most fish landed in the UK is exported, with the EU market being a key destination and most of the fish consumed in the UK is imported from the EU (UK in a Changing Europe, 2020). During the Brexit negotiations the UK aimed to separate the issue of fishing waters access from market access. However, the EU’s perspective was that the two were closely connected and any conditions of market access were dependent on access to UK fishing grounds.

The Trade and Cooperation Agreement that was eventually agreed on 23 December 2020 between the EU and UK government reflects a compromise between these two positions. The EU’s starting position was to largely maintain the status quo on fisheries but softened this to provide an increase in the UK’s share between 15 - 18 percent of the total catch value of UK catch in UK waters over a 7-8 years (Stewart 2020). The UK Government’s starting position seems to have been underpinned by some of the fisheries representatives more fanciful claims that £1.6 billion worth of fish per year should be repatriated to the UK via Brexit, and set to gain 80% of the value of the EU catch in UK waters over a 3 year period (Stewart 2020). The final deal provides for a 25 percent of increase in the UK’s share of catch value over a five-and-a-half-year period. The impact of the deal can be reviewed periodically and if there are disputes then either side can reduce access or impose tariffs on fish or other goods or suspend other parts of the trade deal. The new Brexit fisheries trade deal therefore emphasises continuity over change, despite the narratives of ‘taking back control’ during the Brexit referendum campaign.

In terms of the governance of the deal, there will be a Joint Partnership Council (JPC) which will make sure the Agreement is properly applied and interpreted, and in which all arising issues will be discussed. The JPC will be supported by a range of Committees. The idea behind the JPC is that it is there to ensure that there are no legal obstacles which act as barriers for countries to meet obligations. Typical functions of the committees will be to engage in conflict resolution to settle disputes and to potentially make amendments to the trade agreement if any areas require revision. The JPC will be supported by six themed sub-committees on citizens’ rights, Cyprus, Gibraltar, financial provisions, Northern Ireland (NI), and a further sub-committee relating to ‘other separate provisions’ which addresses issues which do not fall within the remit of the other committees (UK Government, 2019). In terms of fisheries, the Northern Ireland committee will address ‘the conditions under which fisheries and aquaculture products landed by NI vessels will be exempt from EU duties’ (Wright and Owen, 2020: 3). The separate provisions committee will likely cover aspects of fisheries governance.

Perhaps there is a degree of policy symbolism attached to the naming of the sub-committees in that despite the macro-political contestations around fisheries between the UK and the EU, the
topic has become institutionally more muted compared to other areas of Brexit policy. This points to the fact that the coming years will likely see further regulatory alignment and continuity over change in line with the Brexit trade agreement. What may emerge in the future are debates about the levels of transparency associated with the JPC and its associated committees. In the absence of further details the degree of scrutiny afforded to UK parliamentarians of the JPC remains unclear given that the JPC is under no obligation to publish minutes of meetings (i.e. there are, at the time of writing, no reporting requirements) and the sub-committees will be led by officials (the JPC will be co-chaired by the Duchy of Lancaster and Minister for the UK Cabinet Office and by the Vice President of the EU Commission for Interinstitutional Relations and Foresight). These arrangements warrant future evaluation in light of the fact that the deep-rooted pre-Brexit narratives of the EU’s ‘democratic deficit’ (terminology often used as an anti-EU legitimating device in British politics) might not necessarily be addressed in practice and might not eliminate the public’s pre-Brexit perceptions about EU policy-making being elite-driven (Richardson, 2018).

On the one hand, the phased approach to changes to access and the committee structures and governance provisions within the Trade and Cooperation Agreement serve to highlight that some form of integration, even if loose, in the area of fisheries policy will continue, despite the UK’s departure from the CFP. However, it also points to a wider reality in terms of fisheries policy, which is that fisheries management cannot be undertaken in isolation. Indeed, many of the fish stocks present in the UK’s EEZ are shared and cross maritime boundaries. To this end the UK has a number of international obligations under the UN Convention on the Law of the Sea it is still bound to follow. This includes the need to ensure the sustainability of fish stocks within its EEZ and to avoid over-exploitation. It also includes obligations to cooperate with neighbouring coastal states on the management of shared stocks and to allow access to foreign vessels where there is a surplus of fish stocks that cannot be caught by UK vessels alone. In addition, the UK will continue to engage with a wider range of international organisations and bodies in fisheries management, such as the North-East Atlantic Fisheries Commission and International Council for the Exploration of the Sea. In this way, then, the UK continues to be bound to a wider system of fisheries management and governance.

Overall, while the UK has left the CFP, it has not left its broader international obligations around fisheries governance and to ensure the sustainable management of shared fish stocks. Ongoing cooperation and some form of integration with the EU and other neighbouring coastal states (such as Norway and the Faroe Islands) in the area of fisheries policy is inevitable.

**Multi-level fisheries policy implementation**

We now turn to the relationship between the Scottish and UK government and the intertwined fisheries policy responsibilities and the importance of the fishing industry for both Scotland and the UK in economic terms. We then examine the political tensions in relation to fisheries and provide an analysis of the emerging internal governance framework for fisheries and the opportunities for differentiations that this may afford.
Since the 1998 devolution settlement the UK can be regarded as a quasi-federal system in which policy responsibilities have been devolved to the Scottish level whereas others have been retained by the UK government. However, the UK’s post-devolution system largely operates in the absence of any formalised federal governance structures. The 1998 Scotland Act sets out the policy responsibilities retained by the UK government. For some areas, the level of responsibility is fairly clear (i.e. immigration is a UK competence). This split in competences, however, is complicated by the very nature of fisheries policy. While fisheries policy itself is devolved, successful fisheries management requires engagement in international negotiations and international trade, both competencies that are reserved by the UK government. For example, this has meant that when the UK was a EU Member State, Marine Scotland - a civil service directorate of the Scottish Government - would be responsible for the management of the Scottish seas which includes controlling the activities of vessels in the Exclusive Economic Zone (EEZ) (see Figure 23.1).

Figure 23.1: The internal borders of the UK’s Exclusive Economic Zone

Source: UK Hydrographic Office (2021) contains public sector information licensed under the Open Government Licence v3.0

While the UK was an EU Member State, decisions on quotas were decided annually by ministers of Member States (i.e. UK level). However, given the importance of fisheries to Scotland (see below), the Scottish equivalent minister would accompany the UK minister at the Council of Fisheries Ministers. Furthermore, negotiating positions were arrived by discussion between Marine Scotland and the UK’s Department for Environment, Food and Rural Affairs (DEFRA) (McAngus et al. 2018). However, these arrangements are largely ad hoc and depend to an extent
on the goodwill of the UK government. This is the consequence of a lack of UK constitutional design that provides a framework for shared responsibilities at the state level. Any disagreements in relation to the future arrangements (more on this below) have focused on where the line between competencies for fisheries policy is considered a devolved matter and the right to engage in international negotiations, which is a reserved UK government competence, can be drawn. These tensions strongly relate to the extent to which Scotland, as a sub-state authority, is able to integrate with EU level policy frameworks at a different level from the UK as a whole.

A second driver for a multi-level fisheries policy implementation is related to the spatial distribution of fishing interests across the UK. The total landings of fish in terms of tonnage and value is much higher in Scotland and also the numbers of fishers and vessels are proportionally much higher in Scotland (see Table 23.1). Therefore, although fishing also represents only a small proportion of the Scottish economy, it is comparatively much more important to the Scottish economy than it is to the UK as whole. In addition, the nature of the fishing industry differs across the UK’s four nations. For example, Scotland dominates the pelagic and demersal fisheries, whereas in England and Wales the shell fishing sector is more important. The fishing fleets in England and Wales also tend to be dominated by smaller inshore under 10-meter vessels, whereas in Scotland and Northern Ireland there are higher proportions of larger off-shore vessels. This all points to the heterogeneous nature of the fishing industry and its interests across the UK (Huggins et al. 2019; 2020).

Table 23.1: Share of fishing industry per nation (2019)

<table>
<thead>
<tr>
<th></th>
<th>England</th>
<th>Northern Ireland</th>
<th>Scotland</th>
<th>Wales</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of vessels 10m and under</td>
<td>2,323</td>
<td>198</td>
<td>1,560</td>
<td>385</td>
</tr>
<tr>
<td>Number of vessels over 10m</td>
<td>496</td>
<td>128</td>
<td>549</td>
<td>29</td>
</tr>
<tr>
<td>Total fleet capacity (tonnes)</td>
<td>58,903</td>
<td>18,605</td>
<td>113,618</td>
<td>4,724</td>
</tr>
<tr>
<td>Number of fishers</td>
<td>5,477</td>
<td>822</td>
<td>4,847</td>
<td>897</td>
</tr>
<tr>
<td>Total landings by nationality of vessels (1000 tonnes)</td>
<td>179.9</td>
<td>43.3</td>
<td>386.0</td>
<td>8.4</td>
</tr>
<tr>
<td>Total value of landings by nationality of</td>
<td>328.6</td>
<td>57.3</td>
<td>574.0</td>
<td>18.8</td>
</tr>
</tbody>
</table>
On the one hand the fact fisheries policy is devolved presents opportunities for the different parts of the UK to pursue approaches tailored to the specificities of their own industries. However, there is also a recognition that effective management of fisheries requires cooperation and the need to avoid widely divergent approaches within the UK. To this end it has been proposed that fisheries (and a range of other policy areas) are subject to ‘common frameworks’ as a way to ensure a consistent approach to policy and to overcome some of the complications caused by intertwined areas of competencies (Paun, 2018). In terms of the emerging post-Brexit governance framework, the Fisheries Act proposes to achieve this through Joint Fisheries Statements, in which the UK fisheries administrations jointly set out their policies for achieving key objectives. The Act also sets out powers for the devolved administrations in a number of areas, including licensing and marine conservation. However, the Act also sets out that fishing opportunities will be decided at the UK level (albeit in consultation with the devolved administrations), and gives the UK government an effective veto over what is decided at the international level, both with the EU and other coastal states. Overall, then, the emerging framework to ensure multi-level cooperation remains underdeveloped and has already led to criticisms that the UK government is attempting to centralise its powers in Westminster (The UK in a Changing Europe, 2020).

In this context, the fisheries issue has become subsumed into the wider political debates around Brexit, the devolution settlement, and Scottish independence. Politically, the Brexit referendum has left the UK deeply divided. The referendum not only produced a narrow 51.9 percent majority in favour of leaving but there were important regional differences across the UK. Moreover, London, Northern Ireland and Scotland all voted remain and in Scotland the pro-remain results has become a key focal point in terms of wider constitutional questions - particularly Scottish independence. Scotland voted overwhelmingly in favour of remaining in the EU (62 percent) and every Scottish local authority voted to remain in the EU. Britain’s relationship with the EU has become subsumed in the broader Scottish Question (McHarg and Mitchell 2017). In the early 1990s the SNP (the party of government in Scotland since 2007) adopted an ‘independence in Europe’ strategy for Scottish independence. During the 2014 Scottish independence referendum campaign the SNP argued that an independent Scotland would ‘take its place amongst the Member States of the EU’ (Scottish Government 2014). In the referendum campaign, which was won by the “Better Together”; pro UK campaign (54 - 46 percent), EU membership was one of their major issues. The ‘Yes’ campaign (for Scottish independence) led by the SNP argued that an independent Scotland could continue to be a member of the EU without having to reapply for membership, or at the very most this application process would be expedited. The Better Together campaign argued that an independent Scotland would be at the back of the queue in terms of EU membership and would have to commit to unpopular EU policies such as the Euro. It argued that continued membership of the EU could only be guaranteed by remaining part of the UK.
The EU referendum result renewed hope for the Yes campaign of a new Scottish independence referendum for a number of reasons. First, there is the argument that the Brexit referendum outcome demonstrated that Scotland’s democratic voice in the UK is not being heard and that the current devolution framework does not adequately protect Scottish interests from the ‘continued legal adherence to the assumptions of a unitary [UK] constitution’ (McHarg and Mitchell 2017). Second, the argument that Scotland can only remain in the EU as a constituent part of the UK has been turned on its head. Third, for the SNP these events represent a ‘significant and material change in the circumstances that prevailed in 2014’ (SNP 2016) and therefore, they argue, merits a rerun of the Scottish independence referendum. Fourth, in 2020 opinion polls on Scottish independence have shown increased support for Scottish independence. It is not entirely clear whether this is related to the UK’s handling of the Brexit or COVID crisis. In the direct aftermath of the Brexit vote there was no evidence of an “independence bounce” but in 2020 the polls have moved to show a consistent support for Scottish independence of around 55 percent (Curtice et al. 2020). Fifth, the UK government, led by Prime Minister, Boris Johnson, have so far ruled out the prospect of a new Scottish independence referendum, arguing that the 2014 referendum was a once in a generation event. However, the SNP are polling very high for the 2021 Scottish Parliament elections, and a strong performance in these elections will strengthen demands for a new referendum.

In the context of the Brexit debate and constitutional wranglings, fisheries poses somewhat of a conundrum for the SNP. By firmly positioning an independent Scotland in the EU, it by default commits to rejoining the unpopular CFP. The SNP has tried to resolve this tension by calling for fundamental reforms of the CFP (Huggins et al. 2020). However, it also argues that as an independent coastal state Scotland will be able to represent Scottish interests at the top table. Yet, the reality is that Scotland would be a small Member State of the EU (with a similar population to Finland and Denmark) and, as such, its influence might be limited even though it would be a Member State with one of the largest EEZs.

However, the SNP has long argued that the UK government has used fisheries as a bargaining chip in negotiations with the EU. Therefore, in an independent Scotland, Scotland’s voice would, according to the SNP government, be heard more effectively and fishing would be a higher priority than it currently is within the UK (Scottish Government 2014). The 2020 Trade and Cooperation Deal with the EU saw a relatively small increase in UK fishing rights but did not meet the expectations of many within the industry. Hence this line of argument is likely set to continue in the future.

Now that Brexit has become legally enshrined and the Trade and Cooperation Agreement has been agreed, questions remain about what opportunities there are for Scotland to follow a different route from the rest of the UK. The Scottish Parliament has adopted a European Union Continuity Bill which sets out new powers and measures to align devolved Scottish law with European Union (EU) legislation post-Brexit (Scottish Government 2020). This bill cements the Scottish Government’s intention to keep pace with EU legislation (wherever possible). As Scotland voted to remain part of the EU, it is seen by the Scottish Government as a continuation of the will of the people but also as a way to facilitate any potential EU membership application.
One of the questions is to what extent it is feasible in the long run for Scotland to follow and implement potentially unpopular EU regulations when it does not have an obligation to do so.

Furthermore, Brexit has shown some of the weaknesses in the current devolution settlement, with some arguing that the UK government is centralising some of what were regarded as devolved powers. Many of the UK post-Brexit bills (including the Fisheries Bill) require approval by the Scottish Parliament under what is called the Sewel Convention. As McEwen (2020) notes, ‘the constitutional convention that the Westminster parliament will not normally legislate with regard to devolved matters, or alter the competences of the devolved institutions, without the consent of the Scottish Parliament, has been widely considered to be a cornerstone of the devolution settlement’. Yet the UK Government’s behaviour during the Brexit process has been seen to undermine these principles. For example, the introduction of the Internal Market Bill has been seen to decentralise significant powers, such as through reserving additional powers in Westminster and giving the UK government spending powers in devolved policy areas (McEwen, 2020). Overall, the introduction of the Internal Market Bill, together with the UK government’s wider approach to handling the Brexit process, has led to significant distrust between the UK government and the devolved administrations (Dougan et al., 2020). To this end the repatriation of fisheries policy from the EU has been characterised as an “intergovernmental disruption” (McAngus et al., 2019).

The extent to which Scotland can remain close to the EU and have a different relationship with the EU than the rest of the UK depends on its ability to remain integrated within the many more informal networks that exist at EU level. Evidence from other third countries has shown that maintaining informal relations is an important factor in terms of understanding EU fishing policy developments (van der Zwet et al. forthcoming). In this context it is important for Scotland to maintain its institutional capacity in Brussels, particularly through its Scotland Europa office but also to encourage and facilitate Scottish stakeholders to remain active in EU networks. It would also mean building alliances and links with other sub-state regions, for example through regional networks such as the North Sea Commission and the Conference of Peripheral and Maritime Regions (CPMR). In recent years Scottish regions have been more active in these organisations than many English counterparts. There is no reason to think that the current Scottish Government would not further encourage such participation.

**Differentiated disintegration**

This section of the chapter considers how the case of fisheries relates to multi-level external differentiated integration. It identifies some of the underlying mechanisms that explain the drivers of multi-level external differentiated integration. We start by briefly discussing the concept of differentiated integration in relation to Brexit, including the informal dimension. This is followed by a discussion of the key drivers of external differentiated integration.

Differentiated integration can be understood as the idea that integration of European Member States do not produce uniform outcomes and that diversity is an essential and enduring characteristic of the European integration process (Schimmelfennig et al. 2015). However, such
a process has been largely conceived as uni-directional. Although there might be differentiation between Member States in the way that EU policies are adopted, all Member States are committed to the idea of an “Ever Closer Union” and therefore European integration might be multi-speed, the direction is in the same direction. Hence, at least until the Brexit referendum differentiated disintegration was not part of the conceptual and theoretical framing.

Brexit has stimulated reconsiderations of the nature of the European integration process. In this context differentiated disintegration can be considered as ‘the selective reduction of a Member State’s level and scope of integration’ (Schimmelfennig 2018). The UK has long voiced strong opposition to the CFP and in the early stages of the trade deal negotiations the UK set out a position which suggested an almost complete disintegration from some of the fundamental principles of the CFP, in particular the idea of relative stability. However, in line with Schimmelfennig (2018) expectations, the UK moderated its demands considerably towards the final stages of the negotiations and functional imperatives as well as wider international obligations largely prevailed.

However, differentiated disintegration as a concept can draw from some of the more recent advances in the differentiated integration literature. There is now a well-established body of literature examining the nature of external differentiated integration (e.g. Lavenex 2015), which builds on previous scholarly work that examines the relationship with the EU and it nearest neighbours (e.g. Jónsdóttir 2012; Kux and Sverdrup 2002; Stead 2014). These studies focus on the extent to which non-EU states are integrated into EU policy processes and, as such, they provide some ideas in terms of what the post-Brexit UK-EU relation might look like and what drivers of integration might prevail. The literature focuses on formal institutionalised integration, for example through treaties or through coordinated policy responses. To an extent this process of external integration with EU institutions is partially coercive, in the sense that when EU members decide to allocate authority in a certain policy area to the supranational level, and this includes negotiation and/or coordination with third countries, external Member States are forced to negotiate and engage at the supra-national level. Fisheries policy can be considered quite a unique policy area in this context. In many cases third countries have avoided integrating fisheries policy with the EU. For example, the European Economic Area (EEA) Agreement does not include fisheries and its signatories (Norway, Iceland and Faroe Islands) are not part of the CFP. However, access to the single market including for fish products are part of the EEA agreement. The EEA agreement provides a framework (outwith annual bilateral discussions) for engagement where fisheries related issues can form part of the discussion.

However, besides this formal dimension of external differentiated integration which examines the integration of third countries through treaties and other formal agreements, it also consists of an informal dimension. Leruth and Lord (2015) note that when we dig down into specific policies, differentiation does not only take place at formal level (treaty obligations) but the regulatory frameworks that follow on from the treaties are implemented in a very diverse manner. Similarly, Andersen and Sitter (2006) recognise the informal dimensions of differentiated integration and argue that this has become a common feature which can lead to intended or unintended forms of integration. Conceptually, it has been difficult to capture what would constitute informal differentiated integration. Andersen and Sitter (2006: 313) refer to “the differences, or
discretionary aspects, associated with putting EU policy into practice’. Third countries might be integrated in European policy processes though networks which do not directly carry legal obligations but that do allow them important insight and important influence in policy process. This informal dimension can be perceived as more voluntary as it allows actors to operate according to practical needs on the ground. In the case of Scotland, it can be build on pre-existing membership in various maritime related organisations such as the NSC and CMPR to maintain informal links where possible and keep close to EU policy developments.

Studies of differentiated integration have, to a degree, suffered from state-centred methodological approaches, with very little attention being afforded to differentiation at the sub-state level. There are some definitions of differentiated integration that make reference to sub-state entities (see Dyson and Sepos 2010) but both empirical and conceptual understanding of what we have called multi-level differentiated integration is limited. This is problematic in terms of understanding differentiated integration in the EU but also in terms of the level of integration that non-EU sub-state entities might achieve in comparison to other sub-state entities in their state but also the state itself. This is particularly important in the context of the disintegration that forms part of the Brexit process because sub-state entities already have pre-existing relationships with many European institutions. The contested nature of Brexit politicises these relationships and makes them, as seen with the case of Scotland, politically expedient.

There are a number of factors that drive external differentiated integration at the sub-state level. First, sub-state entities with a high level of authority over policy areas can be expected to have more opportunities for differentiated integration. For Scotland, policy competencies that are held at the sub-state level often require some level of international engagement, although formal competencies on foreign policy are reserved to Westminster. However, conceptually regional authority consists of two dimensions (Hooghe et al. 2016) which can be expected to lead to different outcomes in terms of sub-state differentiated integration. The level of devolution (i.e. responsibility of policy areas at the sub-state level) would indeed increase the potential for differentiated integration at the sub-state level. If sub-state entities have more responsibilities in an area there will also be more incentives to seek tailored relationships within EU policy frameworks dependent on functional imperatives (see below). However, the level of shared responsibilities at the state level, which is the second measure of regional authority, could have a negative impact on differentiated integration. If sub-state entities are able to influence policy making frameworks and agree common positions at the national level there is less incentive for pursuing individual relationships with EU institutions.

Second, functional imperatives will determine the level of integration that is being pursued. Schimmelfennig (2015) notes that interdependencies vary across policies, countries and time. This applies similarly to sub-state entities. Furthermore, once the initial steps towards integration are taken this creates spill-over effects and path dependencies that can accelerate integration and therefore increase differentiation (Schimmelfennig 2016). A third driver that explains sub-state differentiated integration is political expediency. If the party(s) in power at the sub-state level are a rival of the party(s) in power at the national level then there may be incentives to seek a different relationship, or at least pursue a narrative that emphasises a different relationship. In the case of Scotland, there are clearly further compounding factors in the form of a nationalist
movement led by the SNP that can politicise the issue of European membership in the pursuit of its core goal of Scottish independence.

It is the informal dimension of differentiated integration which is more relevant and therefore requires further investigation when considering the sub-state dimension of differentiated integration. As even the most powerful sub-state entities have limited responsibilities in relation to foreign policy, and therefore do not have the capacity to negotiate formal treaties, they operate at a more informal level. If we look at the case of the UK, for the post-Brexit context it could very well be the case that there are more limited formal agreements that bind the UK to EU policy frameworks but there are regions (Wales, Scotland and Northern Ireland) that are capable and willing to align themselves and engage with EU policy processes on a less formal basis and, therefore, achieve a higher level of integration than others. The expectation would be that such integration would primarily take place in low politics (Ritterger et al. 2014) where the autonomy costs are lower. Where internal differentiation occurs in highly interdependent and highly politicised policy areas, external differentiation (the selective policy integration of non-Member States) occurs in highly interdependent policy areas where there is low degree of politicisation (Schimmelfennig et al. 2015).

**Conclusions**

The chapter shows that Brexit has not produced radical de-Europeanisation of fisheries, which perhaps has been one of the most Europeanised areas of UK public policy. The politics of the 2016 referendum has led to Britain’s constitutional withdrawal from the EU but this has not been matched by policy disintegration in the fisheries area. Fish and the oceans in which they swim are a fundamentally shared resource and there are mutual interests in working in partnership. In many senses the institutional arrangements and specifics around the new agreement, in terms of access to waters and quota, maintain a strong degree of regulatory and institutional alignment. This is not, however, something that has been welcomed by all stakeholders given that the SNP government in Scotland, and some within the catching sector, feel that fishing rights has been the sacrificial lamb on the altar of Brexit, which is a reflection on the view that Scotland’s voice not being heard. Indeed, this chapter has shown that constitutional politics in Britain are complex which means that what we have argued to have been fine-tuning for fisheries governance post-Brexit could, in the longer-term, be subject to more significant policy reform depending on the outcome of a possible second referendum in Scottish independence.

The current and future political dynamics around Britain’s relationship with the EU presents a window of opportunity to research differentiated integration. For the fisheries, the macro-level politics versus the operational aspects of post-Brexit linked to Britain’s constitutional debate is fertile ground for future analysis of the formal and informal routes surrounding the EU-UK policy interface. This could include examining the performance of the JPC arrangements, as well as whether Brexit could actually lead to greater levels of institutionalisation of UK policy in the EU,
rather than the other way around. In short, the political narratives of divergence are greater than the reality.

Finally, fisheries policy provides a case study of potential multi-level differentiated integration. The drivers for increased integration on fisheries between Scotland and the EU are both functional and political. Functionally, Scotland as one of the devolved nations within the UK, has by far the largest fishing fleet and largest catching sector in the UK and as such has a strong incentive to engage with the EU when it comes to fisheries policy (Huggins et al. 2019). Politically, Scotland voted to remain in the EU by a substantial margin (62 -38 percent) and was the most pro-EU part of the UK. Furthermore, the current Scottish Government is led by the Scottish National Party (SNP) which campaigned for EU membership. Taken together, the political and functional imperatives are present for maintaining and fostering a differentiated relationship with the EU. However, there are also notable drivers that would suggest multi-level differentiated integration can be curtailed. The relationship between the EU and UK will be first and foremost managed through the Trade and Cooperation Agreement which does not make provisions for sub-state entity influence. Furthermore, at least according to some, the UK is pursuing a recentralisation agenda and undermining the existing constitutional arrangements in the UK. Overall, the new post-Brexit trade agreement indicates that ‘continuity over change’ is not just the catch of the Brexit day for fisheries policy but it will be a feature on the governance menu for several years to come.

This chapter identifies a number of important avenues for future research in relation to differentiated (dis)integration. First of all, as mentioned above, it demonstrates a need for an increase awareness of multi-level dynamics of differentiated (dis)integration. Sub-state entities are not passive recipients of European integration but can play an important role in strengthening or weakening integration, in this light, the informal dimension of differentiated (dis)integration plays an important role. Second, the analysis in previous sections demonstrates that differentiated (dis)integration takes place within a wider international context. For example, in the case of fisheries both the UK and the EU have various international treaty commitments which have remained in place post-Brexit. Disentangling, particularly in the context of external differentiated integration, what can be attributed the EU’s policy influence and what is influenced by a wider international context will be a major challenge. Third, the chapter demonstrates that specific policy-focused case studies can provide further insights into the dynamics of differentiated disintegration.
Bibliography


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Europeanisation refers to when aspects of domestic governance (including policy-making process and institutional changes) are impacted by EU integration and/or when domestic arrangements impact on EU policy-making processes (Buller and Gamble 2002).

The increase differs significantly from species to species.